PREMIER'S COUNCIL ON NATIVE AFFAIRS

PROGRESS REPORT
AND
INTERIM RECOMMENDATIONS

JULY 25, 1990

PREFACE

In July, 1989, Premier Vander Zalm created a Premier's Council on Native Affairs.

The purpose of the Council was to review provincial policies affecting aboriginal people and to meet with tribal councils across the Province to hear their concerns.

The Premier appointed to the Council three aboriginal and three non-aboriginal British Columbians, along with the Minister of Native Affairs and the MLA for MacKenzie. The Premier is chairman of the Council. (See Appendix A.)

Since its formation, the Council has met with 11 tribal councils and 8 aboriginal organizations (see Appendix B).

Hundreds of issues have been raised. They range from specific, local concerns to widespread social and economic problems.

Local issues have been referred to provincial ministries for immediate follow-up where possible.

The body of this report deals with the larger public policy questions that have been raised.

Some of these issues are extremely complex. Many are intertwined with long-standing grievances about land and aboriginal rights. Many more are complicated by the jurisdictional divisions within Canada.

The terms that are used, such as "land claims, the land question, aboriginal rights, aboriginal title, and self-government", mean different things to different groups.

The main message the Council heard from aboriginal people across the Province was "respect who we are".

In spite of the complexity of the issues and some difficulty with terminology, a number of common themes emerged from the meetings:

* the need for greater economic opportunity for aboriginal people;

* the need for more effective social and health services;

* the need to safeguard the environment;

* the need for improved access and control over education.

Overriding all of these issues was the need to resolve the land question.

This progress report deals only with the areas of economic development, social issues and the land question.

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INTRODUCTION

Over the past year we have travelled from one end of this Province to the other to meet with aboriginal people.[1]

We have met in community halls with large public audiences and with small delegations.

We have met with 11 tribal councils representing 10 language groups, 76 bands and more than 17,000 tribal members.

We have also met groups representing tens of thousands of off-reserve aboriginal people and with provincial associations representing a variety of distinct aboriginal concerns.

Although we expect to learn more at future meetings, we have prepared this progress report on our findings to date.

Our hope is that this document will provide the basis for a broadly-based public discussion on the issues facing the British Columbia Government in its relationship with first citizens.

The intense desire of aboriginal people throughout British Columbia to create their own opportunities and to solve their own problems has made a lasting impression on the members of the Council. Aboriginal people clearly want control of their own destinies.

However, we were presented with many examples of situations where aboriginal communities did not have the economic or legal tools to achieve their goals.

The desire for self determination is often frustrated by legislative barriers and inter-jurisdictional problems with the federal and provincial governments, or by structural economic barriers that affect aboriginal people more severely than other British Columbians.

It is distressing to see that most aboriginal communities have not been able to participate fully in the economic activity that has taken place in this Province in recent years.

Notes:

1 'Aboriginal' is the term that has been used most frequently in this report to refer to the people who first inhabited British Columbia. 'Indian' is a legal term for an aboriginal person registered or entitled to be registered under the federal Indian Act.

While the Province overall has seen reduced unemployment and healthy growth in the business sector, we still see aboriginal unemployment at well over 50 per cent in many parts of British Columbia.

The consequence of unemployment is widespread poverty. This is reflected in many of the social problems described at our meetings.

The life expectancy of aboriginal people is still 10 years shorter than for other British Columbians. The incidence of suicide, family violence and substance abuse is more than double that of the general population.

Nevertheless, there is a great deal of hope and positive enthusiasm for change in the communities we have visited.

Community leaders are determined to face difficult problems head on and to seek solutions through hard work and ingenuity.

We heard of several social programs, based on traditional values, that were developed and operated by aboriginal communities. We were also impressed with the many and varied efforts to pursue economic independence.

Where there have been successes, however, the impetus has come largely from within the aboriginal community itself. Governments have cooperated, but there is still a great deal of room for support and expansion of this fledgling progress.

The unresolved land question loomed large over most of our meetings with tribal councils. Many aboriginal leaders consider this the fundamental issue facing their people. Their view is that settling land claims is a prerequisite to economic and social development.

It is abundantly clear that this is a source of increasing frustration. There is increasing determination among aboriginal people to have this issue resolved.

Again and again the Council heard specific warnings that patience is running out. Again and again tribal groups appealed to the Province to join in a process of honest and respectful discussion and negotiation and to help find a solution everyone can live with.

I ECONOMIC DEVELOPMENT

The current regulatory environment in which aboriginal people find themselves has not allowed full participation in the economy. While not all aboriginal people in British Columbia are excluded from the economic mainstream, the participation rate of aboriginal communities is unquestionably lower than in others.

This is not because of lack of will. In communities we visited, aboriginal leaders shared a vision of local economic development. They saw it as essential for strengthening their communities.

We heard how economic development could create income that would in turn finance solutions to some community problems. Economic development was also seen as a means of providing individuals and families with the self esteem that is so often destroyed by poverty.

We looked for common factors to explain why aboriginal people in all regions of the Province from so many different cultural and language groups are affected by this problem. Even in the relative prosperity of Vancouver, aboriginal people are often at the bottom end of the economic scale.

What we discovered are some significant structural barriers:

Availability of Investment and Operating Capital

The Federal Indian Act makes it impossible for a lender to attach property located on an Indian reserve. As a result, aboriginal business people are unable to offer security for a business loan - even when the business is viable and has some valuable assets.

Arrangements such as financing and bonding that are taken for granted by off-reserve businesses are simply not available to aboriginal businesses wanting to produce or market their products or services on-reserve.

For example, a band may have valuable timber on its reserve, but be unable to finance the equipment needed to harvest it.

The federal and provincial governments offer a number of programs to help aboriginal businesses overcome this problem. However, we have heard complaints that there are insufficient program funds available and that government programs cannot respond quickly enough when new opportunities arise. By the time help is approved, the opportunity has passed.

Businesses owned by aboriginal people need to have the same ability to attract capital as other businesses.

Government measures to help might include tax incentives for those who finance native-owned businesses, special assistance to aboriginal lending institutions, an expanded program of loans or loan guarantees through programs such as the Province's First Citizens' Fund.

Leadership and Training

Success in business requires many skills - some of which can only be gained through training.

Isolated, rural communities, generally, have a lower post-secondary participation rate than urban centres. The hundreds of rural aboriginal communities in British Columbia are no exception to this tendency.

We have also been told it is difficult for aboriginal young people to cope with the different culture when they move away from their families to go to school.

Those living in communities with high unemployment and little or no business opportunities also do not have much incentive to train themselves for business.

The provincial government is currently studying ways to increase the participation rate of aboriginal people in post-secondary education. The Council endorses the efforts of the Provincial Advisory Committee on Post-Secondary Education for Native Learners in that regard. It may wish to consider including in this effort a special emphasis on training including business internship programs that will provide skills that are useful in economic development.

II SOCIAL ISSUES

Aboriginal leaders who met with the Council were blunt and candid in their description of social problems. At times it was painful to come face to face with these problems.

The Council has tremendous respect for the grace and courage of those who were able to discuss these matters with a group of outsiders.

We are aware that social welfare and health services on Indian reserves are the responsibility of the federal government. We are also aware that social problems affecting aboriginal people in urban centres are the responsibility of the Province.

Many of the problems faced by aboriginal people appear to be part of the legacy of misguided efforts.

For example, for the better part of a century and as recently as the late 1960's many hundreds of aboriginal families were disrupted by the placement of children in federally-funded residential schools hundreds of miles away from their homes. Although some of these schools were well run, many were not and thousands of children suffered physical, emotional and even sexual abuse.

Similarly, federal Indian policies and the Indian Act contributed to the breakdown of traditional social structures in aboriginal communities by removing most of the authority of band councils to make decisions about their communities. The Act also created divisiveness and disrespect for the traditional hereditary judicial systems.

Programs

Social problems are very much related to many of the economic problems faced by aboriginal communities. Generations of poverty and powerlessness rob people and families of their self esteem.

However much social problems may be rooted in the mistakes of the past or in economic conditions, the damage still needs to be treated and healed.

One message that we heard consistently is that the aboriginal communities want control over their own social programs to address social issues in their own ways.

There is sufficient evidence that programs developed and controlled from outside the aboriginal community have not been very successful.

We recommend that the provincial and federal governments support the concept of social programs being controlled by aboriginal communities.

Jurisdiction

Although aboriginal people are citizens of British Columbia, the Canadian constitution assigns responsibility for providing most government services for those who live on reserves to the federal government.

Social services, education and health care for aboriginal people who do not live on reserve are the responsibility of the Province.

However, these jurisdictions are not as independent as they may first appear.

* Many aboriginal individuals move on and off reserve over time.

* The standard of service provided by the two levels of government is sometimes different.

Health and social issues can emerge on or off reserve and the provincial and federal governments should work together to find ways to cooperate and ensure that their programs complement each other.

Self Government

The concept of self-government in aboriginal communities means different things to different groups. The term aboriginal self-government does not at this time have a precise legal meaning in Canada. It describes a political principle that provides local communities with the authority to regulate themselves and their institutions.

In practice, self-government is discussed at three levels in British Columbia:

Constitutional Entrenchment

During the debate on Canada's current constitution, many people - especially aboriginal people - argued that aboriginal self-government is an inherent right and should be entrenched in the Constitution. This would mean that all federal and provincial laws would be required to conform to the principle that aboriginal people have inherent jurisdiction over their own communities.

Legislated Self-Government

Legislated self-government occurs when provincial and federal governments pass legislation to transfer jurisdiction to local aboriginal governments. The nature of this transfer depends on the objectives of the aboriginal councils and the outcome of negotiations with government. It is unlikely that any two arrangements would be the same. The Sechelt Indian Band is an example of negotiated and legislated self-government. There are other examples in other Canadian provinces.

Incremental Self-Government

Incremental self-government occurs when services such as health, child care or education are transferred from government control to local control by a band or tribal council. In some cases, this is an interim step along the road to more comprehensive, legislated self-government.

Increased support for self-government would give aboriginal communities increased opportunities to use talents and strengths that are often frustrated by the Federal Indian Act, and to develop skills that may be used in business enterprises. Self-government is clearly linked to self determination, self reliance and self respect in aboriginal communities.

We recommend the provincial government actively look for opportunities to accelerate the process of legislated and incremental self government, and to encourage discussion of constitutional entrenchment of self-government during any future review of the Canadian Constitution.

III THE LAND QUESTION

The outstanding issue of aboriginal land claims was the over-riding concern of the tribal councils visited by the Premier's Council on Native Affairs.

The whole question of Indian land claims has been the subject of debate and discussion across Canada since Confederation - and nowhere more so than in British Columbia. Nineteen of the 24 outstanding comprehensive land claims that have been accepted for negotation by the federal government to date are in British Columbia.

Indian leaders conveyed a sense of urgency to the Council in seeking to have this issue resolved.

Indian communities believe their ability to participate fully in the economy and the social fabric of the Province is dependent on an adequate land and financial base from which to create healthy local economies and services for their citizens.

The Council shares the view that there is a need to provide economic advancement and social equity for British Columbia's first citizens, so that aboriginal citizens will be given the opportunity to share with the provincial government the benefits of the natural resources and have an opportunity to share the related responsibilities.

The Premier's Council, after considerable deliberation, is of the view that immediate steps are required to address this situation.

The Council is mindful that major litigation on these issues has been undertaken in recent years.

The Council acknowledges that the Canadian Constitution recognizes the existence of aboriginal rights even though it doesn't define those rights. The Sparrow case, recently decided by the Supreme Court of Canada, also remarked on the existence, unextinguished, of certain aboriginal rights.

In addition, the Supreme Court of British Columbia recently heard final arguments from all parties in a landmark case on aboriginal title, and a decision is expected within a year (Delgum Uukw et al V. The Queen).

The Council concludes that a progress report and recommendations to Cabinet should and must be made in order to speed the process of resolving the issues of aboriginal rights and title.

The Council believes action can be taken without prejudicing any party's legal position, although much of the debate and discussion about land claims in British Columbia centers on questions of who is responsible to resolve the issues and what process might be used.

Importantly, the recent Sparrow decision would seem to confirm that the Government of Canada has the primary responsibility, and also a fiduciary or trust obligation, for Indian matters.

This suggests to the Council that the Government of Canada must quickly find a workable formula for fulfilling its fundamental responsibilities to deal with the outstanding land question in British Columbia.

The Premier's Advisory Council heard again and again from Indian communities that the current federal land claims policies are totally impractical for British Columbia's challenges.

One example is the policy of Canada to negotiate no more than six land claims at any one time, only one of which can be in British Columbia.

The Council was also made aware of the problems created by Canada'a policy of only accepting claims for negotiation where continuous use and occupancy of traditional areas has been maintained.

This policy penalizes bands in urban areas where much of the land has been alienated, and forces bands to consider actions to assert their use and occupancy. These actions may conflict with the rights of others and generate ill will and misunderstanding.

The Council urges Canada to rework its policies to reflect new legal and geographic realities and to develop a comprehensive framework for settling British Columbia's land issues. This new policy has been promised by the federal government for some time.

The Government of British Columbia must, as well, find new ways to address this complex issue and to help effect a just settlement of Native land claims.

The federal government alone cannot access the resources and instruments that are necessary to do this.

Currently the title to and management of the land and natural resources which, in part, might form the basis for a settlement of some claims, are vested in the provincial Crown, and thus, it is vital that the Government of British Columbia be an active participant at the negotiating table.

In addition, the Province should be at the table to ensure that the interests of all British Columbians are taken into consideration as part of the negotiations between Canada and Indian bands.

We do not believe that the Government of British Columbia, by agreeing to such a recommendation, would in any way be relieving Canada of its legal and financial obligations to Native people or the Province.

The Council also believes that the Government of British Columbia should move quickly to establish a specific process by which aboriginal land claims may be received and placed on the negotiating table.

At the same time, the Council feels that Indian leaders and the Province should work together to press the Government of Canada to accept its main responsibility for resolving B.C.'s land claims.

PUBLIC EDUCATION

The Council recommends that a major public awareness initiative should be started immediately to ensure a better understanding of the history of aboriginal issues in British Columbia.

CONCLUSION

The Council is heartened by the Premier's commitment to place this progress report before Cabinet and to ensure that a decision is rendered in August.

SUMMARY OF RECOMMENDATIONS

ECONOMIC DEVELOPMENT

* Businesses owned by aboriginal people need to have the same ability to attract capital as other businesses.

* Government measures to help might include tax incentives for those who finance Native-owned businesses, special assistance to aboriginal lending institutions, an expanded program of loans or loan guarantees through programs such as the Province's First Citizens' Fund.

* The provincial government is currently studying ways to increase the participation rate of aboriginal people in post-secondary education. The Council endorses the efforts of the Provincial Advisory Committee on Post-Secondary Education for Native Learners in that regard. It may wish to consider including in this effort a special emphasis on training including business internship programs that will provide skills that are useful in economic development.

SOCIAL ISSUES

* One message that we heard consistently is that the aboriginal communities wants control over their own social programs to address social issues in their own way.

* We recommend that the provincial and federal governments support the concept of social programs being controlled by aboriginal communities.

* Health and social issues can emerge on or off reserve and the provincial and federal governments should work together to find ways to cooperate and ensure that their programs complement each other.

* Increased support for self-government would give aboriginal communities increased opportunities to use talents and strengths that are often frustrated by the Federal Indian Act, and to develop skills that may be used in business enterprises. Self-government is clearly linked to self determination, self reliance and self respect in aboriginal communities.

* We recommend the provincial government actively look for opportunities to accelerate the process of legislated and incremental self government, and to encourage discussion of constitutional entrenchment of self-government during any future review of the Canadian Constitution.

THE LAND QUESTION

* The Council urges Canada to rework its policies to reflect new legal and geographic realities and to develop a comprehensive framework for settling British Columbia's land issues. This new policy has been promised by the federal government for some time.

* The Government of British Columbia, as well, must find new ways to address this complex issue and to help effect a just settlement of Native land claims. The federal government alone cannot access the resources and instruments that are necessary to do this.

* Currently title to and management of the land and natural resources which, in part, might form the basis for a settlement of some claims, are vested in the provincial Crown, and thus, it is vital that the Government of British Columbia be an active participant at the negotiating table.

* In addition, the Province should be at the table to ensure that the interests of all British Columbians are taken into consideration as part of the negotiations between Canada and Indian bands.

* We do not believe that the Government of British Columbia, by agreeing to such a recommendation, would in any way be relieving Canada of its legal and financial obligations to Native people or the Province.

* The Council also believes that the Government of British Columbia should move quickly to establish a specific process by which aboriginal land claims may be received, prioritized and placed on the negotiating table.

* At the same time, the Council feels that Indian leaders and the Province should work together to press the Government of Canada to accept its primary responsibility for resolving B.C.'s land claims.

PUBLIC EDUCATION

* The Council recommends that a major public awareness initiative should be started immediately to ensure a better understanding of the history of aboriginal issues in British Columbia.

APPENDIX A

MEMBERS OF THE PREMIER'S COUNCIL ON NATIVE AFFAIRS

The Honourable Bill Vander Zalm,
Premier of British Columbia

The Honourable Jack Weisgerber,
Minister of Native Affairs

Harold Long,
MLA for provincial electoral district of Mackenzie

Dan Hanuse,
Elder and member of the Nimpkish Band,
Logging contractor and businessman, originally from Alert Bay, currently residing in Vancouver

Robert Louie,
Chief of the Westbank Indian Band,
Lawyer and rancher, member of the Provincial Advisory Committee on Post-Secondary Education for Native Learners

Margaret Vickers,
Aboriginal consultant, Kispiox, B.C.,
Educator, board member of the Open Learning Authority, former member of the University of Victoria Senate

Dr. Paul Gallagher,
President, Vancouver Community College,
Active in post-secondary education and affiliated with the Native Education Centre in Vancouver

Mary Saunders, Q.C.,
Partner, Campney & Murphy, Barristers & Solicitors, Vancouver; director, Justice Institute of British Columbia; member and Acting Complaint Commissioner, B.C. Police Commission; governor, Johannesen International School of the Arts, Victoria International Festival, Canada Opera Piccola

Hajimu Watanabe,
President and General Manager, Daiwa Securities Canada,
Parent company involved in large economic development initiatives with aboriginal groups in the United States

APPENDIX B

PREMIER'S COUNCIL ON NATIVE AFFAIRS
ROUNDTABLE MEETINGS WITH TRIBAL GROUPS AND
PROVINCIAL ORGANIZATIONS
TO JULY 25, 1990

Nisga'a Tribal Council, New Aiyansh, July 28, 1989

United Native Nations, Vancouver, September 18, 1990

Sechelt Indian Band, Vancouver, November 6, 1989

Tahltan Tribal Council, Dease Lake, November 6, 1989

Okanagan Tribal Council, Penticton, November 28

All Nations Trust, Penticton, November 28, 1990

Intribal Forestry Association, Penticton, November 28, 1990

Shuswap Nation Tribal Council, Kamloops, November 28

First Citizens' Advisory Committee, Vancouver, December, 1990

Indian Arts and Crafts Society of B.C., Vancouver, December, 1990

Carrier-Sekani Tribal Council, Fort George Band Hall, January 19, 1990

Nuu-chah-nulth Tribal Council, Port Alberni, February 27, 1990

Haisla Tribal Council, Kitamaat Village, March 12, 1990

Provincial Advisory Committee on Post-Secondary Education for Native Learners, April 10, 1990

Nicola Valley Tribal Council, Merritt, May 4, 1990

Western Indian Agricultural Corporation Limited, Merritt, May 4, 1990

Mid-Island Tribal Council, Victoria, June 25, 1990

First Nations of South Island Tribal Council, Victoria, June 25, 1990

Lillooet Tribal Council, Victoria, July 20, 1990

Province of
British Columbia

NEWS RELEASE

MINISTRY OF NATIVE AFFAIRS
90:18

FOR IMMEDIATE RELEASE
JULY 25, 1990

NATIVE AFFAIRS MINISTER SEEKS ENDORSATION OF FINDINGS

VICTORIA -- Native Affairs Minister Jack Weisgerber said today he will ask cabinet to endorse the findings of the Premier's Council on Native Affairs which called for "a just settlement of Native land claims."

Weisgerber said the premier council's interim report was given to cabinet Wednesday and said he will urge his colleagues to adopt the recommendations in the report suggesting the provincial government immediately take steps to join with the federal government and Indian leaders to negotiate land claims, which includes outstanding issues related to aboriginal title and rights.

Weisgerber said the legal nature of aboriginal title could continue in a state of uncertainty for a number of months pending delivery of a judgement in the recently concluded Gitksan court case. He said the province should respond quickly to Indian leaders who have called for a negotiated settlement in preference to further, lengthy litigation.

He said the resolution of the meaning of aboriginal rights and title "is best reached through mutual understanding and the negotiation of an honourable settlement of land claims and related questions."

Weisgerber said the time to begin negotiations is now, although the province is mindful that the Supreme Court of B.C. decision, expected later this year, will have an impact on all parties' positions.

The Native Affairs Minister noted that the federal government, while not adopting a legal recognition of aboriginal title, has negotiated and settled major land claims in other parts of Canada.

"I think we could begin negotiations in B.C. on the same basis - that to create certainty for Indian people and all British Columbians we are prepared to sit down and clarify with those most concerned all of the questions surrounding the land claims issue.

"I believe the province should acknowledge that there are certain aboriginal rights and interests and that these need to be taken into account in order to effect a settlement which will have the support of aboriginal peoples and, indeed, all British Columbians."

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"Many Indian leaders have said we should put aside arguments over aboriginal rights, title, sovereignty and related issues, abandon emphasis on court proceedings, move to the negotiation table and concentrate in that non-confrontational environment on getting fair settlements.

"I agree with those sentiments and will ask my colleagues to endorse a policy leading to such negotiations at the earliest opportunity."

He noted that the Nisga'a Tribal Council, for example, has been negotiating with the federal government for many years even though Canada has not legally accepted the concept of outstanding aboriginal title.

"I believe it would be reasonable for the province to join those negotiations, as the Nisga'a have requested and to be prepared to join others as they are put forward.

"It is reasonable for the province, federal government and Indian leaders to come to the table, each with their own positions and without preconditions which force one party to wholly accept the other's position in advance of discussions.

"At the same time, I call on the Government of Canada to abandon its present, unworkable land claims policy and develop a "made in B.C." policy for application in this province which would dramatically speed the resolution of the claims issue here."

Weisgerber noted existing federal policy allows for only six land claims to be negotiated anywhere in Canada at one time. In B.C. alone, more than 22 claims have been filed and more are expected.

"At the current rate, it would take many decades to resolve these claims and that is totally unacceptable," Weisgerber said.

He said that despite repeated promises, Ottawa has failed to deliver on a land claims proposal for B.C., or to come up with a workable framework for negotiations.

"Nonetheless, I will be recommending the provincial government provide leadership in this area at this critical time in the province's relationship with Native peoples," he said.

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